Supreme Court U.S.
FILED
AUG 23 2004
OFFICE OF THE CLERK

No. 04-116

IN THE

Supreme Court of the United States

STATE FARM MUTUAL AUTOMOBILE INS. CO.,
Petitioner,

v.

INEZ PREECE CAMPBELL AND MATTHEW C. BARNECK,
SPECIAL ADMINISTRATOR AND PERSONAL REPRESENTATIVE
OF THE ESTATE OF CURTIS B. CAMPBELL,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UTAH SUPREME COURT

BRIEF IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI

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COUNTER STATEMENT OF QUESTION PRESENTED

Whether this Court should grant review to consider the Utah Supreme Court's factbound application of the guideposts prescribed by this Court *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996), and explicated in the circumstances of this very case only one Term ago in *State Farm Mutual Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Inez Preece Campbell and Matthew C. Barneck, Special Administrator and Personal Representative of the Estate of Curtis B. Campbell, respectfully submit this Brief in Opposition to the Petition for Writ of Certiorari filed in this case.

This case involves a punitive award against State Farm for its fraudulent and bad faith conduct in handling a third-party insurance claim. Just one Term ago, this Court reviewed this case on the merits and held that the Utah courts could not consider State Farm's nationwide claims-processing policies in determining the size of a punitive award needed to fulfill Utah's legitimate interests in deterrence and punishment. *State Farm Mutual Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003). This Court vacated the $145 million punitive award and instructed the Utah Supreme Court on remand to apply the guideposts prescribed in *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996) – not with reference to State Farm's nationwide policies, but only with regard to State Farm's conduct in Utah that bore relation to the harm suffered by the Campbells. The Utah Supreme Court did exactly that in recalculating the award in accordance with this Court's mandate and entering an award of approximately $9 million.

The Petition makes two principal points. First, it repeatedly accuses the Utah court of "repudiat[ing] specific findings by this Court" and of "refus[ing] to follow the mandate of this Court." Pet. 6, 28. Those charges are unfounded and unfair. They rest on State Farm's mischaracterizations of the Utah Supreme Court's opinion. In fact, the Utah Supreme Court faithfully followed this Court's mandate and did not consider any out-of-state conduct by State Farm in assessing the punitive award in this case.

Second, the Petition seeks to re-argue the Utah court's factual findings. Even if there were merit to the Petition's arguments – and there is not – there would be no reason for this Court to grant certiorari to decide the factbound questions presented by State Farm. The Petition is a textbook example of a factbound challenge to a lower court's application of a settled legal principle. The Petition should be denied.

STATEMENT OF THE CASE

1. The Initial State Proceedings. In 1981, Curtis Campbell was responsible for an automobile accident that disabled Robert Slusher and killed Todd Ospital. At the time, Mr. Campbell was insured by State Farm up to $25,000. As this Court found, "[e]arly investigations did support differing conclusions as to who caused the accident, but 'a consensus was reached early on by the investigators and witnesses that Mr. Campbell's unsafe pass had indeed caused the crash.'" 538 U.S. at 413 (quoting the opinion of the Utah Supreme Court).

Nonetheless, State Farm chose not to settle the case. As this Court observed, State Farm "ignored the advice of one of its own investigators and took the case to trial, assuring the Campbells that 'their assets were safe, that they had no liability for the accident, that [State Farm] would represent their interests, and that they did not need to procure separate counsel.'" *Id.* (quoting the opinion of the Utah Supreme Court).

At trial, Mr. Campbell was found 100 percent responsible and a judgment was entered against him for $135,849. State Farm refused to pay this amount, suggesting instead that the Campbells put their house up for sale to pay off the judgment. State Farm's counsel told the Campbells: "'You may want to put for sale signs on your property to get things moving.'" *Id.* "Nor was State Farm willing to post a supersedeas bond to allow Campbell to appeal the judgment

against him. Campbell obtained his own counsel to appeal the verdict." *Id.*

During the pendency of the appeal, in late 1984, Slusher, Ospital, and the Campbells reached an agreement whereby Slusher and Ospital agreed not to seek satisfaction of their claims against the Campbells. In exchange, the Campbells agreed to pursue a bad faith action against State Farm. *Id.* The Utah Supreme Court affirmed the judgment against Campbell. *Slusher v. Ospital*, 777 P.2d 437 (Utah 1989). State Farm ultimately paid the entire judgment.

The Campbells filed a complaint against State Farm alleging bad faith, fraud, and intentional infliction of emotional distress. At trial, the Campbells were permitted to introduce evidence regarding State Farm's nationwide claims-processing policies. *See* 538 U.S. at 415 (quoting the opinion of the Utah Supreme Court).

The jury awarded the Campbells $2,086.75 in special damages, $2.6 million in compensatory damages, and $145 million in punitive damages. The trial judge remitted this amount to $1 million in compensatory damages and $25 million in punitive damages. On appeal, the Utah Supreme Court reinstated the original jury verdict of $145 million in punitive damages, relying on the evidence of State Farm's nationwide claims-processing policies.

2. This Court's Decision. On plenary review, this Court vacated the punitive award and remanded the case to the Utah Supreme Court. This Court's holding rested on the legal conclusion that the Utah court erred in considering State Farm's nationwide policies as a basis for punitive damages. This Court found that the evidence "concerned State Farm's business practices for over 20 years in numerous States. Most of these practices bore no relation to third-party automobile insurance claims, the type of claim underlying the Campbells' complaint against the company." 538 U.S. at 415. "This case . . . was used as a platform to expose, and punish, the perceived deficiencies of State

Farm's operations throughout the country. The Utah Supreme Court's opinion makes explicit that State Farm was being condemned for its nationwide policies rather than for the conduct direct[ed] toward the Campbells." *Id.* at 420.

This Court therefore concluded that the Utah Supreme Court's reinstatement of the $145 million punitive award was legal error. However, this Court did not exonerate State Farm. To the contrary, this Court found that State Farm's conduct was "reprehensible," *id.* at 419, and it reiterated many of the factual findings made by the Utah courts. *Id.* This Court suggested that, while State Farm's misconduct could not justify a $145 million award, it could nonetheless justify a "more modest" award of punitive damages: "While we do not suggest there was error in awarding punitive damages based upon State Farm's conduct toward the Campbells, a more modest punishment for this reprehensible conduct could have satisfied the State's legitimate objectives, and the Utah courts should have gone no further." *Id.* at 419-20.

This Court opined that "[o]ur jurisprudence and the principles it has now established demonstrate . . . that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Id.* at 425. "Nonetheless, because there are no rigid benchmarks that a punitive damages award may not surpass, ratios greater than those we have previously upheld may comport with due process where 'a particularly egregious act has resulted in only a small amount of economic damages.'" *Id.* (citation omitted).

This Court commented that "[a]n application of the *Gore* guideposts to the facts of this case, especially in light of the substantial compensatory damages awarded (a portion of which contained a punitive element), likely would justify a punitive damages award at or near the amount of compensatory damages." *Id.* at 429. However, this Court did not purport to calculate the maximum award that the

Constitution would permit on this record. Rather, the Court expressly left that task to the Utah Supreme Court on remand: "The proper calculation of punitive damages under the principles we have discussed should be resolved, in the first instance, by the Utah courts." *Id.* "[T]he case is remanded for proceedings not inconsistent with this opinion." *Id.*

3. The Utah Supreme Court's Decision. On remand, State Farm argued that the appropriate punitive damages award was $1,002,086.75. The Campbells sought $17,455,663.00. The Utah Supreme Court rejected the arguments of both parties, recomputed the punitive award under the legal standard prescribed by this Court, and entered a punitive award of $9,018,780.75. The Utah Supreme Court's decision was unanimous and included the votes of two new members not on the original panel.

The Utah Supreme Court began by making clear that its "duty in the face of a remand order demands unwavering fidelity to the letter and spirit of the mandate." A.2a. "We take seriously the Supreme Court's direction that 'the proper calculation of punitive damages under the principles we have discussed should be resolved, in the first instance, by the Utah courts.'" *Id.* "[W]e must properly identify and apply the Supreme Court's principles announced in *Campbell II*." A.4a.

The Utah Supreme Court declined to consider any out-of-state evidence concerning State Farm's nationwide claims-processing policies in assessing punitive damages. A.5a-6a. Therefore, the Utah Supreme Court carefully limited its focus to State Farm's in-state conduct that bore relation to the harms suffered by the Campbells. A.6a. The Utah court heeded this Court's observation that punitive awards bearing a single-digit ratio with compensatory damages are more likely to satisfy due process. A.15a. The Utah court held that "State Farm's behavior toward the Campbells was so egregious as to warrant a punitive

damages award of $9,018,780.75, an amount nine times greater than the amount of compensatory and special damages." A.19a.

The Utah Supreme Court issued a measured, balanced opinion that rejected the Campbell's requested damages and ruled in State Farm's favor in an important respect with respect to the ratio guidepost. On remand, the Campbells argued that the total "compensable harm" for ratio purposes should be treated as $1,939,518.10 (meaning that the relevant ratio in this case would be calculated not as 9:1 but as approximately 4.6:1). On the basis of *TXO Prod. Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 449 (1993), the Campbells contended that costs and attorney fees, as well as the excess portion of the verdict not covered by insurance, should be included as part of the denominator in computing the ratio between compensatory and punitive damages. But the Utah Supreme Court rejected the Campbells' argument on the ground that it was foreclosed by this Court's opinion in *Campbell*. A.18a. Thus, the Utah Supreme Court strove to honor this Court's mandate and refused to accept the arguments of either party that it believed departed from that mandate.

REASONS FOR DENYING THE WRIT

In *State Farm Mutual Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003) ("*Campbell*"), this Court vacated the previous punitive damage award in this case because "[t]he Utah Supreme Court's opinion makes explicit that State Farm was being condemned for its nationwide policies rather than for the conduct direct[ed] toward the Campbells." *Id.* at 420. This Court did not have the benefit of the Utah courts' view of the proper punitive award based solely on State Farm's conduct in Utah with respect to the Campbells. Accordingly, this Court corrected the Utah courts' erroneous consideration of nationwide claims-processing policies and instructed the Utah Supreme Court to undertake "[t]he proper calculation of punitive damages under the principles we have

discussed." *Id.* at 429. On remand, the Utah court recalculated the award "based solely on [State Farm's] behavior that affected the Campbells and took place within Utah." A.6a. The Utah Supreme Court properly applied the legal standard this Court outlined, and there is no reason for this Court to review its judgment.

State Farm disagrees with the Utah Supreme Court's factual findings. The Petition repeatedly seeks to re-argue the evidence in this case. *See, e.g.*, Pet. 10 (arguing about what inferences "the record" permits); *id.* at 11 (Utah court's finding "inconsistent with" "the record in this case"); *id.* at 12 ("the record does not support" Utah court's finding); *id.* at 12-13 (recounting trial testimony at length); *id.* at 14 ("[t]he record in this case" allegedly shows no need for deterrence); *id.* at 14 n.7 ("unrebutted testimony of State Farm's regional vice president" allegedly undermines Utah courts' findings); *id.* at 15 (Utah courts' findings allegedly wrong "[i]n view of the record").

State Farm impermissibly asks this Court to sit as fact-finder to second-guess the factual determinations of the lower courts. The Petition dredges up inadmissible and uncorroborated hearsay. *E.g., id.* at 16 n.8. The Petition relies on evidence that was not before the jury or trial court. *Id.* at 15 n.7, 16 n.8. The Petition goes so far as to dispute *this Court's* previous finding that State Farm told the Campbells to put a for-sale sign on their house. *Compare* Pet. 13 n.6 *with* 538 U.S. at 419.

State Farm's description of the record in this case is not accurate. More to the point, however, State Farm's attempt to retry the facts of the case demonstrates the Petition's lack of merit. This Court's scarce resources and distinctive capacities are not sensibly devoted to a fact-finding mission of the sort State Farm evidently contemplates. Rule 10 states that "[a] petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly

stated rule of law." This Petition, which ignores Rule 10, is a classic attempt to challenge a lower court's factbound application of a settled legal rule.

Nor would granting the Petition provide any appreciable assistance to the lower courts. This Court has already provided ample guidance regarding the due process factors that govern punitive damage awards. Just one Term ago, this Court issued its decision in *Campbell* explicating the constitutional factors previously announced in *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996). There is no reason to review the punitive award in this case yet again. The lower courts are still absorbing this Court's decision only one Term ago vacating the initial punitive award in this very case. After the *BMW* decision, this Court waited six years for the lower courts to sort out the implications of that decision, before granting certiorari in *Campbell*. Further percolation in the lower courts would enable this Court to decide what additional guidance, if any, is appropriate. It is much too soon for this Court to revisit ground so recently tilled. The Petition should be denied.

I. THE UTAH SUPREME COURT PROPERLY FOLLOWED THIS COURT'S MANDATE ON REMAND.

On remand, the Utah Supreme Court faithfully followed this Court's mandate. The Petition is demonstrably wrong in asserting that "[t]he Utah Supreme Court flatly refused to honor the spirit and letter of this Court's opinion." Pet. 25. The Utah court made clear that "our duty in the face of a remand order demands unwavering fidelity to the letter and spirit of the mandate." A.2a. "[W]e must properly identify and apply the Supreme Court's principles announced in *Campbell II*." A.4a. The Utah court explained that this Court "narrow[ed] the scope of relevant evidence which we may consider in evaluating the reprehensibility of State Farm's conduct, and . . . provid[ed] more detailed guidance for determining the relationship between compensatory and

punitive damages." A.5a. "We have carefully considered the scope of the Supreme Court's mandate and have endeavored scrupulously to confine ourselves to it." A.18a.

The primary focus of this Court's opinion in *Campbell* was the Utah court's improper consideration of extraterritorial evidence. On remand, the Utah Supreme Court recomputed the award without reference to State Farm's nationwide claims-processing policies. Instead, the court limited its focus to State Farm's in-state conduct that bore relation to the harms suffered by the Campbells. A.6a ("We are mindful that it was our consideration of irrelevant extra-territorial evidence concerning reprehensibility which attracted most of the Supreme Court's criticism in *Campbell II*. We therefore reevaluate State Farm's conduct based solely on its behavior that affected the Campbells and took place within Utah."). In imposing a punitive award that was nine times the amount of compensatory damages, the Utah court heeded this Court's admonition that punitive awards bearing a single-digit ratio with compensatory damages are more likely to satisfy the *BMW* guideposts as a matter of due process. 538 U.S. at 425.

State Farm focuses on this Court's comment in *Campbell* that "[a]n application of the *Gore* guideposts to the facts of this case, especially in light of the substantial compensatory damages awarded (a portion of which contained a punitive element), likely would justify a punitive damages award at or near the amount of compensatory damages." 538 U.S. at 429. However, the quoted language is a *prediction* ("likely would justify"), not a *holding* or a *directive*.

If this Court had intended to hold in *Campbell* that a 1:1 ratio between punitive and compensatory damages was the constitutional maximum in this case, it would have directed entry of judgment for that amount. Instead, this Court's mandate was completely different. This Court did not purport to calculate the maximum award that the

Constitution would tolerate on this record. Rather, this Court expressly left that task to the Utah Supreme Court on remand: "The proper calculation of punitive damages under the principles we have discussed should be resolved, in the first instance, by the Utah courts." *Id.* "[T]he case is remanded for proceedings not inconsistent with this opinion." *Id.* Further, this Court twice underscored the "discretion" that states possess "over the imposition of punitive damages," within the constraints of due process. *Campbell*, 538 U.S. at 416, 417 (internal quotation marks omitted).

State Farm improperly seeks to recast the language of the mandate in *Campbell* from that of constrained guidance to that of ministerial directive. State Farm's interpretation conflicts with this Court's customary practice, which is to announce the governing legal *standard* and remand to the appropriate lower court for application of that standard to the facts of the particular case, and not to employ the lower court as a mere calculator or scribe. In *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), for example, this Court instructed the Alabama Supreme Court to undertake on remand an "independent determination" of an appropriate punitive damages award consistent with the guideposts erected by this Court. *Id.* at 586.

It is therefore most implausible to construe this Court's prior opinion as holding that a 1:1 ratio was the constitutional maximum in this case. Such a construction would be especially implausible in light of the prior proceedings here, for the focus of this Court's *Campbell* opinion was whether the Utah Supreme Court could consider the nationwide scope of State Farm's claims-processing policies, or whether instead the Utah court was required to limit its attention to State Farm's conduct within Utah that "bore . . . relation to the Campbells' harm." 538 U.S. at 422. *That* was the sole legal question on which State Farm sought this Court's review. Pet. in No. 01-1289 at i (award "is based upon the defendant's alleged business practices nationwide

over a twenty year period"). State Farm affirmatively represented that this Court would not need to thoroughly analyze the evidence of this case in order to resolve the question presented. *See, e.g.*, Reply Brief filed April 10, 2002, at 5 ("Plaintiffs attempt to dissuade this Court from granting review by claiming incorrectly that State Farm is asking the Court to conduct a fact-intensive review as to whether the 27,000 page record supports the $145 million punitive damages award by the jury in this case.").

Accordingly, even if this Court *had* examined every page of the voluminous record in this case in deciding *State Farm v. Campbell*, it would have done so through an aperture that posed one particular question: whether State Farm's nationwide conduct could properly be considered in justifying a $145 million award. This Court never asked the question necessarily posed by State Farm's latest petition: what would be the highest allowable award upon considering only State Farm's conduct that (a) occurred in Utah and (b) relates to the harm suffered by the Campbells? This Court left that question for the Utah court to resolve in the first instance.

II. THE UTAH SUPREME COURT'S ANALYSIS OF REPREHENSIBILITY IS CONSISTENT WITH THIS COURT'S OPINION.

A. The Utah Supreme Court Properly Followed This Court's Mandate.

The Utah Supreme Court explained that, in assessing reprehensibility, it would "reevaluate State Farm's conduct based solely on its behavior that affected the Campbells and took place within Utah." A.6a. The Utah court concluded that, under this standard, State Farm's misconduct was highly reprehensible. A.8a-14a.

That conclusion, and the subsidiary factual findings that composed it, are completely consistent with this Court's

mandate. In fact, this Court specifically found that State Farm's conduct was "reprehensible" (538 U.S. at 419) and re-affirmed many of the findings of the Utah courts. This Court noted, for instance, that "[t]he trial court found that State Farm's employees altered the company's records to make Campbell appear less culpable. State Farm disregarded the overwhelming likelihood of liability and the near-certain probability that, by taking the case to trial, a judgment in excess of the policy limits would be awarded. State Farm amplified the harm by at first assuring the Campbells their assets would be safe from any verdict and by later telling them, postjudgment, to put a for-sale sign on their house." 538 U.S. at 419. This Court opined that, while such misconduct could not justify a $145 million award, it was nothing short of "reprehensible" and could certainly justify punitive damages: "While we do not suggest there was error in awarding punitive damages based upon State Farm's conduct toward the Campbells, a more modest punishment *for this reprehensible conduct* could have satisfied the State's legitimate objectives, and the Utah courts should have gone no further." *Id.* (emphasis added). Thus, this Court invited the Utah courts to calculate a "more modest" punishment than the original $145 million judgment. On remand, the Utah Supreme Court did exactly that.

B. There Is No Merit To State Farm's Criticisms of the Utah Supreme Court's Application of the Governing Legal Standard To This Record.

The Petition argues that the Utah Supreme Court misapplied the reprehensibility guideposts in a number of respects. None of State Farm's arguments has merit. In any event, State Farm's objections are obviously so fact-specific that they present no question warranting certiorari.

1. Whether the harm was economic or physical.

State Farm accuses the Utah Supreme Court of "directly contradict[ing] this Court's analysis" as to whether

the Campbell's harm was economic or physical. Pet. 9. To the contrary: the Utah Supreme Court expressly stated that "[w]e are mindful of the Supreme Court's observation that 'the harm [in this case] *arose from a transaction in the economic realm*, not from some physical assault or trauma.'" A.9a (quoting 538 U.S. at 426) (emphasis added). Tellingly, this Court did *not* opine that the Campbells' injury as disclosed by this record was purely "economic." It bears repeating that this Court stated only that the injury "arose from a transaction in the economic realm," 538 U.S. at 426, as indeed it did. The Utah Supreme Court's recognition that the harm suffered by the Campbells here extended beyond that ordinarily associated with a purely financial misdeed and encompassed the personal anxiety and the emotion-charged risk they faced as a result of State Farm's conduct is therefore entirely consistent with this Court's opinion.

The state court properly found that "the gravity of harm which an insurer may potentially inflict on an insured is unique to the nature of the product and service that insurance provides." A.9a. "Peace of mind clearly plays a central role in accounting for the appeal of liability insurance." A.10a. "When an insurer decides to delay or to deny paying benefits, the policyholder can suffer injury not only to his economic well-being but to his emotional and physical health as well." A.10a (internal quotation marks omitted). Surely State Farm is not asking this Court to grant certiorari in order to upset that factual conclusion.

Emblematic of the Petition's misstatements of the record is State Farm's assertion that, "as the trial court found, the record was devoid of 'objective evidence of emotional or mental distress.'" Pet. 10 (citation omitted). To the contrary, the trial court *denied* State Farm's motion for judgment on the Campbells' claim for intentional infliction of emotional distress, finding that *there was substantial evidence* to support the claim. JA3359a-62a. The trial court opined that "there was ample competent evidence that the Campbells did suffer substantial emotional damages as a proximate result of

State Farm's wrongful conduct." JA3364a. "Many witnesses, including high-ranking State Farm officials, acknowledged at trial that an excess verdict alone (even if never executed on, in the end) would likely cause mental distress and would traumatically affect the insured." JA 3367a. Witnesses described the 65-year-old Campbell as "devastated," "distraught," "tied up in knots" – so "fragile" and "greatly distressed" that they feared that he might suffer another stroke or a heart attack. JA 813a-14a, 821a, 825a-29a, 1586a-87a, 1660a. The Utah Supreme Court properly concluded that the noneconomic dimensions of the injury suffered by the Campbells were "profound." A.12a.

2. Whether the Utah court properly took the insurance context into account in assessing the reprehensibility of State Farm's misconduct.

State Farm relatedly accuses the Utah Supreme Court of unjustifiably "inflat[ing] its estimate of reprehensibility." Pet. 11. The court did no such thing. The court simply recognized the realities of the insurance context. "When an insurer callously betrays the insured's expectation of peace of mind, as State Farm did to the Campbells, its conduct is substantially more reprehensible than, for example, the undisclosed repainting of an automobile which spawned the punitive damages award in *Gore*." A.11a. Plainly, some injuries "arising in" the economic realm are more reprehensible than others. State Farm provides no authority to support its strange claim that all such injuries must be considered without regard to the particular circumstances of the individual case. State Farm does not identify any circuit split on the issue. Nor does it offer any other reason for this Court to review the matter. Even if State Farm's "irrelevance of context" argument had merit, the matter would plainly benefit from further percolation in the lower courts. There is no occasion now for this Court's review.

3. Indifference or reckless disregard for the health and safety of others.

The Utah Supreme Court found that "[t]here is little doubt that State Farm could reasonably have known that its conduct would cause stress and trauma to a policyholder. State Farm was clearly indifferent to this result, evincing a reckless disregard for the Campbells' peace of mind." A.12a. State Farm contends that this factor must be limited to instances of *physical* injury or danger, Pet. 11, but it offers no analysis of why a defendant's culpable indifference to devastating *emotional* injuries must be treated as irrelevant to the reprehensibility guidepost. Nor does State Farm establish any relevant conflict among lower court decisions requiring this Court's intervention. In fact, in *BMW* this Court opined that "infliction of economic injury, especially when done intentionally through affirmative acts of misconduct, . . . can warrant a substantial penalty." 517 U.S. at 576.

4. Whether the target of the conduct was financially vulnerable.

The Utah Supreme Court found that "not only were the Campbells financially vulnerable, but their vulnerability enabled, if not motivated, State Farm's conduct." A.12a. The trial court specifically found that *"State Farm was aware of the Campbells' vulnerability and fragility, and of the complete trust the Campbells had placed in State Farm and its agents.* State Farm *intentionally* and *fraudulently* betrayed this trust and took advantage of the Campbells' vulnerability." JA 3361a (emphasis added).

On this crucial point, State Farm resorts to re-arguing the record evidence supporting the Utah courts' factual findings. Pet. 12-13. Plainly, however, this Court does not sit as a factfinder to second-guess factual determinations made by the lower courts. In any event, there was ample record evidence of the Campbells' vulnerability and of how State Farm exploited that vulnerability. "At the time of State

Farm's wrongful conduct, the Campbells were elderly and Mr. Campbell has residuary effects from a stroke and Parkinson's disease." JA 3360a. "The Campbells were economically vulnerable, having suffered previous financial setbacks and having meager financial resources." *Id.* "Mr. Campbell had previously experienced severe emotional trauma, including the murder of his first wife, the desertion of his second wife after his stroke, and the death of his third wife from cancer less than two years after their marriage. Mrs. Campbell had gone through a bitter divorce. The Campbells' home had previously gone into foreclosure and one of their cars had been repossessed due to the wrongful actions of Mrs. Campbell's ex-husband." JA 3361a. "The Campbells were quiet, unassuming, and trusting individuals." JA 3366a.

State Farm argues that this Court has somehow already rejected the Utah courts' findings regarding the Campbells' vulnerability simply because "[t]his Court in its opinion did not address this factor" as part of its "reprehensibility analysis." Pet. 12. But even if such silence could constitute an implicit finding, the fact is that this Court *did* address the Campbells' vulnerability when it reiterated the Utah courts' finding that "State Farm amplified the harm by at first assuring the Campbells their assets would be safe from any verdict and by later telling them, postjudgment, to put a for-sale sign on their house." 538 U.S. at 419. The Utah Supreme Court pointed to this very episode as support for its finding that State Farm exploited the Campbells' vulnerability: "It is difficult to imagine State Farm making this statement to a sophisticated insured whom State Farm believed to have the wherewithal to protect himself from its predations." A.12a.

That this Court in its prior opinion did not engage in a more elaborate analysis of the Campbells' vulnerability only goes to show that this Court focused on correcting the Utah courts' erroneous consideration of State Farm's nationwide claims-processing policies, not on the proper punitive award

based solely on State Farm's conduct in Utah. Now that the Utah Supreme Court on remand has manifestly applied the proper legal standard, there is no reason to review its factbound judgment.

5. Need to deter repetition.

The Utah court found that "State Farm's obdurate insistence that its treatment of the Campbells was proper clearly calls out for vigorous deterrence." A.13a. State Farm accuses the Utah Supreme Court of "subverting" this Court's opinion. Pet. 14. But the Utah Supreme Court did no such thing. It explained that "the Supreme Court expressly found that we erred in determining that State Farm was a recidivist" and that "we are bound by the Supreme Court's finding that State Farm was not a recidivist." A.13a. The Utah court focused not on recidivism but on State Farm's propensity to commit further misconduct in the future – a matter that is separate from (and not foreclosed by) this Court's finding that State Farm was, at the time of trial, not a recidivist. The Utah Supreme Court explained that "[w]e will not and, consistent with our duty on remand, cannot invoke deterrence as a justification for punitive damages based on conduct dissimilar to that which State Farm inflicted on the Campbells. We can, however, find ample grounds to defend an award of punitive damages in the upper range permitted by due process based on our concern that *State Farm's defiance strongly suggests that it will not hesitate to treat its Utah insureds with the callousness that marked its treatment of the Campbells*." A.13a (emphasis added). The Utah court's approach is entirely consistent with this Court's opinion and also amply supported by the record. *See* Part II-B-6, *infra*.

State Farm argues that there were no "similar subsequent bad acts" in Utah after its mistreatment of the Campbells. Pet. 14. But State Farm misstates the evidence, and in any event its argument does not undermine the Utah Supreme Court's finding of propensity for future misconduct.

At trial, State Farm was forced to acknowledge there were at least seven excess verdict third-party cases in Utah between 1978 and 1995, JA 288a-89a, and was unable to refute the proof that this figure is likely to be a dramatic understatement. Because State Farm deliberately stopped tracking adverse verdicts in the mid-1970s as a defensive measure, 65 P.3d at 1147 (¶ 26), 1148 (¶ 30); JA 1346a-50a; JA 1412a-18a, its estimate at trial was indisputably little more than a conservative guess. To arrive at the figure of seven excess verdict cases, a State Farm official did nothing more than make phone calls to various company employees and defense counsel in Utah, asking if they happened to remember any excess verdicts involving State Farm insureds. JA 287a-89a. And this figure was reached only after a court-ordered recount. In the initial count, State Farm's sworn discovery response was that its Utah management knew of *no* other excess verdicts. R. 10270:134-35; R. 10285:205-07. Not surprisingly, State Farm's own statistical expert said, "I would have a tendency to be afraid of that data." R. 10283:204. In observing that "[t]he Campbells have identified scant evidence of repeated misconduct of the sort that injured them," 538 U.S. at 423, this Court did not "find," contrary to the record at least as understood below, that the Campbells' was the only State Farm excess verdict third-party case in Utah.

State Farm also relies on supposed "state of mind" letters that it sought to submit after the trial in this case. Pet. 15 n.7. The trial court ruled that these letters were "not in the trial record" and were "stricken from the record," and State Farm did not appeal. R. 10292, 10090-91, 10213-15. On rehearing in the Utah Supreme Court, State Farm appended alleged "state of mind" letters to its petition, without any affidavit attesting that they had actually been sent or any identification of recipients. The Utah Supreme Court denied rehearing without making the letters part of the record or even mentioning them. In 1996 and 1997, State Farm flatly denied the existence of any "peace of mind" policy in two

cases. R. 9179-80, 9190-9203 (attorney affidavit). In 1998, State Farm failed to send any "peace of mind" letter in yet another case. Campbells' Obj. to Rehearing Pet. in Utah S. Ct. at 5 & Exh. 2. By 1999, according to two Utah attorneys formerly employed at the company, State Farm had "revok[ed]" any "policy of sending 'peace of mind' letters." *Id.* at 5 & Exh. 1, ¶ 25(e).

6. State Farm's lack of remorse.

A related point arises in connection with the Utah Supreme Court finding that State Farm "has not voiced so much as a whisper of apology or remorse" and has not "forsworn the conduct that caused the Campbells' injury." A.12. State Farm complains that, by referring to its lack of remorse, the Utah court punished it impermissibly for its "appellate briefing." Pet. 23. This complaint is baseless.

The Utah Supreme Court did not ground the punitive award on State Farm's decision to appeal the verdict. Rather, it grounded that award on State Farm's conduct toward the Campbells and on the fact that State Farm exhibited no contrition or other sign that it would modify its conduct in the future. The Utah court pointed to trial testimony, not simply to appellate briefing, to make that point. A.12a-13a. The finding of lack of remorse was supported not merely by testimony that State Farm was "proud" of the way it treated the Campbells (contra Pet. 24 n.12), but also by the testimony of a State Farm claims adjuster that he had not seen anything in State Farm's conduct relating to the Campbells that violated State Farm guidelines or policies, JA 2712a; by testimony that State Farm subsequently failed to instruct its employees not to engage in the offending conduct, JA 2454a; and by testimony that State Farm failed to discipline any employee. JA 2455a. In *BMW*, this Court indicated that whether a defendant has taken corrective action can be "significant" in assessing a punitive award. 517 U.S. at 579 & n.31. Here, by contrast, State Farm showed no contrition or willingness to reform.

Clearly, State Farm could have exhibited contrition completely outside the courtroom while continuing to press its constitutional objections in court and on appeal with undiluted vigor. In any event, courts routinely draw adverse inferences from parties' judicial submissions (or from gaps in those submissions), with no suggestion that they are "penalizing" the party for its use of the judicial process. *E.g.*, Fed. R. Evid. 801(d)(2)(D) (attorney's oral or written statements may be admissible against client).

State Farm's "remorse" argument, if taken seriously, would invalidate the "acceptance of responsibility" provision of the Sentencing Guidelines, under which a defendant who fails to show remorse will receive a longer sentence than one who does. U.S.S.G. § 3E1.1. Courts have uniformly rejected due process challenges to this provision, and to the consideration of remorse in sentencing generally, on the obvious ground that "acceptance of responsibility for illegal conduct is a routine and unexceptionable feature even of criminal, let alone of civil, punishment. The criminal who in the teeth of the evidence insists that he is innocent, that indeed not the victims of his crime but he himself is the injured party, demonstrates by his obduracy the likelihood that he will repeat his crime, and this justifies the imposition of a harsher penalty on him." *SEC v. Lipson*, 278 F.3d 656, 664 (7th Cir. 2002) (Posner, J.). Precisely that analysis disposes fully of State Farm's argument.

State Farm claims a conflict in this connection with two decisions by intermediate appellate courts in California (notably, not by the California Supreme Court). Pet. 22. But there is no conflict. Unlike the parties in those cases, State Farm was *not* punished for its "trial tactics and litigation conduct" (*id.*); it was punished in view of the likelihood that it would repeat its misconduct in the future. The remaining cases cited in the Petition (at 22) prove the opposite of what State Farm asserts; they show that, even if punitive damages are imposed based in part on a defendant's litigating strategy (which was not the case here), such damages have nothing to

do with penalizing the right to a defense. Rather, they compensate for the under-deterrence caused by such a defendant's efforts "to make litigating against it very costly, which in turn may make it difficult for the plaintiffs to find a lawyer willing to handle their case." *Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672, 677 (7th Cir. 2003) (Posner, J.). *See also Hollock v. Erie Ins. Exch.*, 842 A.2d 409, 421 (Pa. Super. Ct. 2004) ("an extremely aggressive defense . . . in turn can prove very costly to a plaintiff and potentially deter it from pursuing the matter"). There is no lower court conflict and no reason for this Court's review.

7. Intentional trickery or malice.

The Utah Supreme Court properly found that "the substantial emotional damages sustained by the Campbells" were "no mere accident" but instead were the result of State Farm's intentional malice, trickery, and deceit. A.14a. In its special verdict, the jury found for the Campbells on their fraud claim, and the Utah Supreme Court held that the fraud claim provided "an independent basis" for the verdict. 65 P.3d at 1166 (¶ 113). The finding of fraud, and the finding that the verdict could independently rest on fraud, are both amply supported by the record. This Court expressly noted with apparent approval the trial court's finding that "State Farm's employees altered the company's records to make Campbell appear less culpable." 538 U.S. at 419. "For example, State Farm manager Bob Noxon instructed Summers to manufacture the false story that Todd Ospital, who was killed in the automobile accident for which Mr. Campbell was found to be at fault, was speeding because he was on his way to see a pregnant girlfriend. In truth, there was no pregnant girlfriend, nor was Mr. Ospital even speeding; this story was invented only to cause prejudice in the record. This deceitful conduct can only be explained as part of a scheme to reduce State Farm's economic exposure." A.14a. (State Farm's attempt to excuse its misconduct relies on uncorroborated hearsay deposition testimony from a State Farm employee known to have repeatedly placed false

information in files. R. 10268, 10275, 10281, 10284. The deposition was not presented to the jury or trial court. Pet. 16 n.8). The record also makes clear that, while this case was pending, State Farm held a meeting in Utah at which in-house counsel instructed Utah claims managers "to search their offices and destroy a wide range of material of the sort that had proved damaging in bad-faith litigation." Trial ct. opinion 8/3/98 ¶ 55. The record overwhelming supports the Utah Supreme Court's finding of intentional trickery and malice.

8. State "values and traditions."

State Farm argues that the Utah Supreme Court's reference to "Utah's values and traditions" (A.7) represents a violation of federal due process. Pet. 16-20. That argument is wide of the mark. The remark simply underscored the seriousness with which the court viewed State Farm's misconduct. This Court's own opinion in *Campbell* reveals that punitive damages jurisprudence has not erased Our Federalism in the manner that State Farm suggests. "A basic principle of federalism is that . . . each State alone can determine what measure of punishment, if any, to impose on a defendant who acts within its jurisdiction." 538 U.S. at 422. "The States need not, and in fact do not, provide such protection in a uniform manner." *Id.* (internal quotation marks omitted). This Court thus reaffirmed the states' autonomy to make policy choices about the relative reprehensibility of conduct within their own respective borders.

State Farm acknowledges that a state's *legislative enactments* may serve as an appropriate source of state "values and traditions," but it maintains that *state courts* cannot be permitted to invoke "values and traditions" on their own. Pet. 18-19. State Farm has evidently confused the reprehensibility guidepost with the legislative penalties guidepost of *BMW*. The latter is by definition tethered to state legislative enactments. But this Court has never

suggested that, in assessing reprehensibility, state courts are limited to considering state statutes. *E.g., BMW*, 517 U.S. at 585 ("we of course accept the Alabama *courts*' view" regarding "the state interest in protecting its citizens from deceptive trade practices") (emphasis added). Indeed, the day has long passed when the Constitution was thought to distinguish the law made by state judges from that made by state legislators. *See, e.g., Cohen v. Cowles Media Co.*, 501 U.S. 663, 668 (1991); *Shelley v. Kraemer*, 334 U.S. 1, 19 (1948). It is a corollary that federal law has precious little to say on the degree to which a state makes its law through its courts or through its legislature. *See Highland Farms Dairy, Inc. v. Agnew*, 300 U.S. 608, 612-13 (1937); *see also Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 480-81 (1981) (Stevens, J., dissenting).

State Farm's argument that including judge-made factors in the reprehensibility analysis "produces an ad hoc, subjective inquiry" (Pet. 19) is flatly foreclosed by this Court's precedents. *See TXO*, 509 U.S. at 465-66 (plurality opinion) (common law rule satisfied notice component of due process); *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 22 (1991) (judge-made factors "impose[] a sufficiently definite and meaningful constraint on the discretion of Alabama factfinders in awarding punitive damages"). In any event, State Farm fails to establish any circuit conflict on the issue or any need for this Court's review.

III. THE UTAH SUPREME COURT'S ANALYSIS OF THE RATIO GUIDEPOST IS ENTIRELY CONSISTENT WITH THIS COURT'S DECISION.

In *Campbell*, this Court held that the Utah Supreme Court's prior analysis of the ratio guidepost was flawed because it was premised on out-of-state conduct, as well as on State Farm's wealth and other improper factors. 538 U.S. at 426-27. On remand, the Utah Supreme Court corrected these errors by focusing *solely* on State Farm's conduct with

respect to the Campbells. A.15a. State Farm nonetheless accuses the Utah Supreme Court of "refus[ing] to follow the mandate of this Court" with respect to the ratio guidepost. Pet. 28. State Farm's accusation of bad faith is as groundless as it is insulting.

A. The Utah Court Properly Followed This Court's Mandate.

In *Campbell*, this Court opined that it has "been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award." 538 U.S. at 425. "*We decline again to impose a bright-line ratio* which a punitive damages award cannot exceed." *Id.* (emphasis added). However, the Court's "jurisprudence and the principles it has now established demonstrate . . . that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Id.* Nonetheless, this Court emphasized that "[t]he precise award in any case, of course, must be based upon *the facts and circumstances of the defendant's conduct* and the harm to the plaintiff." *Id.* (emphasis added).

The Utah Supreme Court faithfully followed this Court's opinion. The Utah court took as a given this Court's admonition that, "'when compensatory damages are substantial, then a lesser ratio [of compensatory to punitive damages], perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee.'" A.14a (quoting 538 U.S. at 425). The Utah court treated itself as bound by this Court's conclusion that the Campbells' compensatory award was "substantial," and did not purport to question this Court's observation that the compensatory damages likely had been based on a component which was duplicated in the punitive award. A.14a.

But that binding general frame of reference did not preclude the Utah Supreme Court's factual determination,

based on "the circumstances of the compensatory damages award *in this case*," that the trial judge's remittitur of compensatory damages ensured that they did *not* in fact contain a punitive element. A.15a (emphasis added). The jury had originally awarded the Campbells $2.6 million in compensatory damages. State Farm argues that this award contained a punitive element. Pet. 26 n.13. But the trial court granted State Farm's motion for remittitur and reduced the award to $1 million: $600,000 for Mr. Campbell and $400,000 for Mrs. Campbell. A.15a. The trial court engaged in an exhaustive review of the evidence in the case and the emotional harm suffered by the Campbells. JA 3364a-68a. The Utah Supreme Court observed that "[t]he trial court's ruling was supported by extensive and detailed findings explaining the basis for the reduced compensatory damages award. Based on this thorough record, we conclude that the trial court's compensatory damages award was purged of elements which may have been more properly placed in the category of punitive damages." A.15a.

The Utah Supreme Court's analysis accurately applied the legal framework set forth by this Court to the particular circumstances of this case and this trial record. It is, of course, a question purely of Utah law just what constituted the legally compensable injury to the Campbells in this case, State Farm never having sought review in this Court on any of the components of that definition of compensable injury. Therefore, the question of what "injuries" the award received by the Campbells "compensated" was a matter within the sole purview of the Utah courts.

B. The Utah Supreme Court Properly Concluded That A High Single Digit Ratio Was Appropriate.

The Utah Supreme Court reasonably determined that a high single-digit ratio was warranted in this case because the Campbells suffered significant noneconomic injury in the

form of emotional distress and because State Farm's conduct toward the Campbells was highly reprehensible. A.16a. The Campbells were forced to live in fear of financial ruin for 18 months, which is exactly the kind of hard-to-measure, non-economic harm that this Court has noted would justify a higher ratio than usual. *See Campbell*, 538 U.S. at 425; *BMW*, 517 U.S. at 582. The Utah court's conclusion is completely consistent with this Court's mandate, and State Farm's factbound challenges to that conclusion simply recapitulate arguments already addressed in the context of the reprehensibility guidepost. *See* Part II, *supra*.

IV. THE UTAH SUPREME COURT'S ANALYSIS OF THE LEGISLATIVE PENALTIES GUIDEPOST COMPORTS WITH THIS COURT'S OPINION.

In *Campbell*, this Court held that the Utah Supreme Court's prior analysis of the legislative penalties guidepost was improper because it rested on out-of-state conduct. *See* 538 U.S. at 428 ("here again [the Utah court's] references were to the broad fraudulent scheme drawn from evidence of out-of-state and dissimilar conduct."). On remand, the Utah Supreme Court corrected this error by focusing solely on State Farm's conduct with respect to the Campbells, without considering any out-of-state or dissimilar acts. A.16a-17a.

In *Campbell*, this Court pointed to a potential $10,000 fine for fraud as "the most relevant civil sanction" to which State Farm was exposed for its conduct toward the Campbells. 538 U.S. at 428; *see also* Utah Code Ann. § 31A-26-303 (2003). This Court did not decide the question of State Farm's exposure under the Utah statute – an issue that is purely a matter of Utah law. *See BMW*, 517 U.S. at 577 ("only state courts may authoritatively construe state statutes").

The Utah Supreme Court properly followed this Court's mandate by analyzing the statutory penalty for fraud in relation to this case. The Utah court opined that, "while a

$10,000 fine for fraud may appear modest in relationship to a multi-million dollar punitive damages award, it is identical to the maximum fine which may be imposed on a person in Utah for the commission of a first degree felony, the classification assigned our most serious crimes." A.17a (citing Utah Code Ann. § 76-3-301 (2003)). The statutory penalty for fraud faced by State Farm reflects the legislature's determination that the company's misconduct was very serious indeed.

The Utah Supreme Court further noted that, although this Court rejected a $145 million punitive award as excessive, this Court indicated at the same time that what this Court called a "more modest" award, such as $1 million, would be reasonable — notwithstanding the fact that, as the Utah court observed, such an award would be "one hundred times greater than the $10,000 fine." A.17a. "Thus, somewhere between $1 million and $145 million," the Utah Supreme Court properly inferred from this Court's opinion, "the difference between the $10,000 civil penalty and the punitive damages award becomes so great that the latter 'dwarfs' the former." *Id.* As to State Farm's assertion "that [this] Court impliedly found that the civil penalty would be dwarfed by a $17 million punitive damages award," the Utah court rightly refrained from offering any opinion, finding it sufficient to express its "conviction that a punitive damages award of $9,018,780.75 is in line with the third *Gore* guidepost." *Id.* Because the Utah court reached this conclusion, it did not inquire into other potential penalties faced by State Farm, A.18a, although the court made plain its view — as a matter of state law obviously not reviewable by this Court — that "State Farm's behavior," especially given the company's insistence that such behavior was nothing it need feel remorse over and the consequent risk that it might "become a pattern in Utah, may indeed be justification for *termination of its license*, a penalty that surely would cost it more than $10,000." A.17a n.8 (emphasis added).

These findings are fully consistent with this Court's mandate. There is simply no basis for State Farm's assertion that the Utah court "improperly discounted the importance of the comparable penalties" and "disparage[d]" that guidepost. Pet. 29. To the contrary, the Utah court explained that "[t]he nature of a civil or criminal penalty provides some useful guidance to courts when fixing punitive damages because it reflects 'legislative judgments concerning appropriate sanctions for the conduct at issue.'" A.17a (quoting *Browning-Ferris Indus. v. Kelco Disposal, Inc.*, 492 U.S. 257, 301 (1989) (O'Connor, J., concurring in part and dissenting in part)). The Utah court's observation that "the quest to reliably position any misconduct within the ranks of criminal or civil wrongdoing based on penalties affixed by a legislature can be quixotic," A.17a, far from signaling resistance to this Court's legislative penalties guidepost, merely echoed this Court's parallel observation that "[t]he existence of a criminal penalty does have bearing on the *seriousness* with which a State views the wrongful action. When used to determine the *dollar amount* of the award, however, the criminal penalty has less utility." *Campbell*, 538 U.S. at 428 (emphasis added). The Utah court simply recognized, as did this Court in *Campbell*, that the excessiveness inquiry cannot be reduced to a rote arithmetic calculation.

V. THERE IS NO BASIS FOR SUMMARILY REVERSING THE UTAH SUPREME COURT'S JUDGMENT.

The Petition seeks summary reversal of the Utah Supreme Court's judgment. There is no basis for such a request. Principles of federalism counsel that the judgment of a state's highest court should not be summarily reversed absent exceptional circumstances. Robert L. Stern & Eugene Gressman, *et al.*, SUPREME COURT PRACTICE 323 (8th ed. 2002). That test cannot be met here. The Utah Supreme Court faithfully followed this Court's mandate. State Farm's contrary claim rests on improper second-guessing of the state

court's factual determinations, on the basis of extra-record "non-evidence." *E.g.*, Pet. 15 n.7, 16 n.8. State Farm also tries to convert this Court's *Campbell* decision into a fixed 1:1 ratio rule, which is precisely the opposite of what this Court made plain it was holding — rejecting, as it has repeatedly rejected, any rigid mathematical rule in assessing punitive awards. *See Campbell*, 538 U.S. at 425; *BMW*, 517 U.S. at 582.

This Court's practice supports summary reversal only where a lower court has committed a clear error of law that conflicts with a decision of this Court or other well-established principle. *E.g., City of Los Angeles v. David*, 538 U.S. 715, 716 (2003) (per curiam) ("the Ninth Circuit's holding runs contrary to well-settled principles of constitutional law"); *INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam) ("well-established principles of administrative law"); *United States v. Bass*, 536 U.S. 862, 863 (2002) (per curiam) (lower court decision "is contrary to [*United States v. Armstrong*, 517 U.S. 456 (1996),] and threatens the 'performance of a core executive constitutional function'") (citation omitted); *Sao Paulo State of the Federative Republic of Brazil v. Am. Tobacco Co.*, 535 U.S. 229, 232 (2002) (per curiam) (lower court used improper legal standard to decide recusal issue).

In this case, however, State Farm's argument comes down to the proposition that the Utah Supreme Court erred in finding the pertinent facts revealed by the record in the course of applying the *BMW* guideposts. Even if the Utah court made a factual mistake – which it did not – no such factual error could justify summary reversal. *See, e.g., Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 513 (2001) (Stevens, J., dissenting) ("factbound determination[s]" inappropriate for summary reversal). Nor has State Farm even attempted to argue that the Utah Supreme Court is an outlier among the lower courts in the way in which it has interpreted this Court's mandate.

In any event, the extensive, 27,000-page record below would make it impossible for this Court to dispose of this case summarily. In the previous *Campbell* proceeding before this Court, the focus was on whether the Utah Supreme Court erred in considering State Farm's nationwide claims-processing policies. The briefing and joint appendix were prepared with that focus in mind. Thus, if this Court were to review the Utah Supreme Court's application of the *BMW* guideposts to this factual record with respect to in-state Utah conduct, the Campbells would clearly be entitled to argue all the law and facts that support a $9 million punitive award on this record — including evidence that was not (because it did not have to be) identified in *Campbell* or included in the joint appendix. *See, e.g.*, Campbells' Opening Br. on Remand in Utah S. Ct. at 12-15 & n.12 (June 9, 2003); Reply Br. 24 & n.13, 27-28 (July 16, 2003). In short, plenary briefing and argument would be unavoidable.

Notably, the Petition does *not* contend that summary reversal in this case would provide any appreciable guidance to the lower courts on punitive damages issues. Nor would such a contention be plausible. For this Court has recognized that "[t]he precise award in any case, of course, must be based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff." *Campbell*, 538 U.S. at 425. "[T]here are no rigid benchmarks that a punitive damages award may not surpass." *Id.* Accordingly, even if this Court were to engage in an exhaustive review of the evidentiary record to decide the reasonableness of the punitive award, the exercise would be of little or no value to lower courts considering different punitive awards based on different factual records. The fact-intensive review urged by the Petition would therefore be a singularly inappropriate use of this Court's necessarily finite resources.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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